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Draft report of the International Law Commission on the work of its seventieth session

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Chapter II
Summary of the work of the Commission at its seventieth session

1. With respect to the topic "**Subsequent agreements and subsequent practice in relation to the interpretation of treaties**", the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/715), as well as comments and observations received from Governments (A/CN.4/712 and Add.1). The fifth report addressed the comments and observations made by States on the draft conclusions and commentaries adopted on first reading and made recommendations for each draft conclusion.

2. As a result of its consideration of the topic at the present session, the Commission adopted on second reading a set of 13 draft conclusions, together with commentaries thereto, on subsequent agreements and subsequent practice in relation to the interpretation of treaties. In accordance with article 23 of its statute, the Commission recommended … (chap. IV).

3. With regard to the topic "**Identification of customary international law**", the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/717), which addressed the comments and observations made by States on the draft conclusions and commentaries adopted on first reading, as well as ways and means for making the evidence of customary international law more readily available.

4. The Commission also had before it an addendum to that report (A/CN.4/717/Add.1) providing an updated bibliography on the topic, the comments and observations received from Governments (A/CN.4/716), and the memorandum by the Secretariat on ways and means for making the evidence of customary international law more readily available (A/CN.4/710).

5. The Commission subsequently adopted, on second reading, a set of 16 draft conclusions on identification of customary international law, together with commentaries thereto. In accordance with article 23 of its statute, the Commission recommended … (chap. V).

6. With respect to the topic "**Protection of the atmosphere**", the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/711), which was devoted to questions concerning implementation, compliance and dispute settlement.

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7. Following the debate in the Commission, the Commission decided to refer the three draft guidelines, as contained in the Special Rapporteur's fifth report, to the Drafting Committee. As a result of its consideration of the topic at the present session, the Commission adopted, on first reading, a draft preamble and 12 draft guidelines, together with commentaries thereto, on the protection of the atmosphere. The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft guidelines, through the Secretary-General, to Governments, international organizations and others, for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 15 December 2019 (chap. VI).

8 With regard to the topic "**Provisional application of treaties**", the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/718 and Add.1), which continued the analysis of views expressed by Member States, provided additional information on the practice of international organizations, and addressed the topics of termination or suspension of the provisional application of a treaty as a consequence of its breach, and formulation of reservations and amendments. It also provided a bibliography on the topic. In addition, the Commission had before it the memorandum by the Secretariat reviewing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, that provide for provisional application, including treaty actions related thereto (A/CN.4/707).

9. Following the debate in the plenary, the Commission decided to refer the draft guidelines and model clauses proposed by the Special Rapporteur, as well as the draft guidelines previously adopted by the Commission, to the Drafting Committee. Upon consideration of the report of the Drafting Committee, the Commission adopted on first reading a set of 12 draft guidelines, with commentaries thereto, entitled "Guide to Provisional Application of Treaties". The Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft guidelines, through the Secretary-General, to Governments and international organizations for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 15 December 2019 (chap. VII).

10. With respect to the topic "**Peremptory norms of general international law (*jus cogens*)**", the Commission had before it the third report of the Special Rapporteur (A/CN.4/714 and Corr.1), which set out the previous consideration of the topic in the Commission and the Sixth Committee, and discussed the consequences of peremptory norms of general international law (*jus cogens*) in general, for treaty law and for the law of State responsibility, as well as other effects of peremptory norms of general international law (*jus cogens*). The Commission subsequently decided to refer draft conclusions 10 to 23 contained in the report to the Drafting Committee. The Commission took note of the interim reports of the Chair of the Drafting Committee on draft conclusions 8 and 9, as well as 10 to 14, provisionally adopted by the Committee, respectively. Those interim reports were submitted to the Commission for information purposes (chap. VIII).

11. With respect to the topic "**Protection of the environment in relation to armed conflicts**", the Commission had before it the first report of Special Rapporteur (A/CN.4/720 and Corr.1), which addressed the protection of the environment in situations of occupation. The report offered a general introduction to the protection of the environment under the law of occupation and addressed the complementarity between the law of occupation, international human rights law and international environmental law. The report contained three draft principles relating to the protection of the environment in situations of occupation. Following the debate in plenary, the Commission decided to refer the draft principles, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently received the report of the Drafting Committee, and took note of draft principles 19 to 21, provisionally adopted by the Drafting Committee. Furthermore, the Commission provisionally adopted draft principles 4, 6 to 8, and 14 to 18, which had been provisionally adopted by the Drafting Committee at the sixty-eighth session, together with commentaries thereto (chap. IX).

12. With respect to the topic "**Succession of States in respect of State responsibility**", the Commission had before it the second report of the Special Rapporteur (A/CN.4/719), which addressed the legality of succession, the general rules on succession of States in

respect of State responsibility, and certain special categories of State succession to the obligations arising from responsibility. Following the debate in plenary, the Commission decided to refer draft articles 5 to 11, as contained in the report of the Special Rapporteur, to the Drafting Committee. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee on draft article 1, paragraph 2, and draft articles 5 and 6 provisionally adopted by the Committee, which was presented to the Commission for information only (chap. X).

13. With regard to the topic "**Immunity of State officials from foreign criminal jurisdiction**" the Commission had before it the sixth report of the Special Rapporteur (A/CN.4/722), which was devoted to addressing procedural aspects of immunity from foreign criminal jurisdiction, in particular, analysing the way in which procedural aspects had been dealt with previously in the work of the Commission, how such procedural aspects fit within the overall boundaries of the present topic and the approach which the Special Rapporteur intended to follow when analysing procedural aspects; and providing an analysis of three components of procedural aspects related to the concept of jurisdiction, namely: (a) timing; (b) kinds of acts affected; and (c) the determination of immunity. There were no draft articles proposed for consideration at the present session. The debate of Commission on the sixth report was partial and will be completed next year (chap. XI).

14. Concerning the seventieth anniversary of the Commission, it held commemorative events, in New York on 21 May 2018, and in Geneva on 5 and 6 July 2018, under the theme "70 years of the International Law Commission — Drawing a balance for the future". The commemorative events in both New York and Geneva consisted of two segments, a solemn part, followed by a series of panels discussions. The keynote address in New York was delivered by Mr. Nico Schrijver, Professor of Public International Law, Grotius Centre for International Legal Studies, Leiden University, and President of the Institute of International Law. The keynote address in Geneva was delivered by Mr. Abdulqawi Ahmed Yusuf, President of the International Court of Justice (chap. XII).

15. As regards "**Other decisions and conclusions of the Commission**", the Commission decided to include the topic "General principles of law" in its programme of work and to appoint Mr. Marcelo Vázquez-Bermúdez as Special Rapporteur for the topic (chap. XIII, sect. A).

16. The Commission re-established a Planning Group to consider its programme, procedures and working methods, which in turn decided to re-establish the Working Group on the long-term programme of work, chaired by Mr. Mahmoud D. Hmoud, and the Working Group on methods of work, chaired by Mr. Hussein A. Hassouna (chap. XIII, sect. C). The Commission decided to include in its long-term programme of work the topics (a) universal criminal jurisdiction and (b) sea-level rise in relation to international law (chap. XIII, sect. C.1, and annexes A and B).

17. The Commission continued its traditional exchanges of information with the Inter-American Juridical Committee and the Committee of Legal Advisers on Public International Law of the Council of Europe. Members of the Commission also held an informal exchange of views with ICRC (chap. XIII, sect. E).

18. The Commission decided that its seventy-first session would be held in in Geneva from 29 April to 7 June and from 8 July to 9 August 2019 (chap. XIII, sect. D).